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RUEHBJ/AMEMBASSY BEIJING 0574
RUEHKO/AMEMBASSY TOKYO 1280
RUEHUL/AMEMBASSY SEOUL 0286
RUCNDT/USMISSION USUN NEW YORK 2151
RUEHNO/USMISSION USNATO 2479
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SUBJECT: KAZAKHSTAN: CONSTITUTIONAL COUNCIL RULES RELIGION LAW IS
UNCONSTITUTIONAL

REF: (A) 08 ASTANA 2494
(B) 08 ASTANA 2388
(C) 08 ASTANA 2365
(D) 08 ASTANA 1107
(E) 08 ASTANA 767

11. (U) Sensitive but unclassified. Not for public Internet.

12. (SBU) SUMMARY: On February 11, Kazakhstan's Constitutional Council ruled that the proposed amendments to the country's religion law are inconsistent with Kazakhstan's Constitution. Before arriving at its decision, the Council studied reviews of the legislation done by ODIHR and local experts, and questioned several high-level government officials and parliamentarians. The Ombudsman's Human Rights Commission and the Ministry of Foreign Affairs strongly argued against the legislation, with the MFA contending that it would severely tarnish Kazakhstan's image in advance of its 2010 OSCE chairmanship. Other government officials and the parliamentarians argued in favor of the law, but the Council members systematically dismissed their arguments, which one civil society activist sees as proof that they "got orders from above" to rule the legislation unconstitutional.

LAW JUDGED UNCONSTITUTIONAL

13. (U) On February 11, Kazakhstan's Constitutional Council ruled that the draft religion law is inconsistent with the country's Constitution. The draft law, which has been heavily criticized by civil society activists and the international community, was passed by the parliament on November 26 (ref B) and sent to the Council for review by President Nazarbayev on January 8. The Council's ruling means that Nazarbayev cannot sign the legislation into law. (NOTE: Kazakhstan's Constitution does allow the President to object to a Constitutional Council ruling -- in which case the Council must go back and muster a two-thirds majority ruling to block the President from signing a law. However, to our knowledge, Nazarbayev has never invoked this power. END NOTE.)

STRONG SAY FROM CIVIL SOCIETY AND ODIHR

14. (SBU) OSCE Human Dimension Officer Eugenia Benigni told us that her office provided the Council with the most recent review of the

legislation by OSCE's Office of Democratic Institutions and Human Rights (ODIHR). According to Almaty Helsinki Committee head Ninel Fokina, the Council also reviewed assessments done by local experts, including her own. Fokina, who attended the Council's February 10 session, said that the Council "seems to have studied our comments." According to Fokina, Council member Nikolay Belorukov, who briefed the Council on the legislation, highlighted many of ODIHR's and civil society's objections to the law.

MFA: RELIGION LAW WILL "TARNISH" KAZAKHSTAN'S IMAGE

15. (SBU) Fokina told us that the Council invited several senior government officials and legislators to present the positions of their ministries and the parliament on the law. Deputy Foreign Minister Nurlan Yermekbayev, Deputy Justice Minister Dulat KUSDAVLETOV, Chairman of the Religious Issues Committee ARDAK DOSZHAN, Deputy Prosecutor General ASKHAT DAULBAYEV, Director of the Ombudsman's Human Rights Center (HRC) VYACHESLAV KALUZHNY, and several members of the Senate and the Mazhilis (the lower house of parliament) all spoke at the February 10 Council session. According to Fokina, Yermekbayev and Kaluzhny strongly objected to the law. Kaluzhny cited the Helsinki Committee's analysis in arguing that the legislation would violate Kazakhstan's international commitments on human rights. Yermekbayev, on the other hand, maintained that passing the legislation in advance of Kazakhstan's 2010 OSCE chairmanship would seriously tarnish the country's image and harm Kazakhstan's interests. (NOTE: Foreign Minister TAZHIN made the very same argument in a November 19 internal memo to Prime Minister MASIMOV, in which he contended that the sharp criticism continuously leveled against the legislation from OSCE-member states could easily turn the subject of religious tolerance "from an advantage to disadvantage" for Kazakhstan as it assumes the OSCE chairmanship)

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(ref A). END NOTE.)

"INVITATION TO AN EXECUTION"

16. (SBU) Fokina told us that the other government officials and the parliamentarians attempted to "loyally" defend the legislation, but their arguments were systematically dismissed by the Council, which she believes is proof that the Council "got orders from above" to declare the legislation unconstitutional. "We thought we were invited to a funeral, but it turned out to be an execution," she quipped. As she related to us, the Council members highlighted many problematic provisions of the law. Specifically, they argued that creating a new legal category called a "religious group" would severely restrict the rights of smaller religious groups; that mandating expert analyses of all religious literature would amount to censorship; and that requiring that all religious organizations re-register would violate a provision of Kazakhstan's Constitution that prohibits adverse legislation from having a retroactive impact. As Fokina put it, "The defense had little to say."

17. COMMENT: This is not the first time that the Constitutional Council ruled restrictive religion legislation to be unconstitutional. It previously did so in 2002. Yevgeniy Zhovtis, Kazakhstan's top civil society leader, argued to us several months ago that the religion law was actually aimed at diverting attention from Kazakhstan's Madrid commitments. Specifically, he maintained that the religion law would be killed in the end, earning accolades from Western countries and ensuring they would not focus on the fact that the government did not significantly reform the country's media, election, and political party laws. On the one hand, the fact that the new media, election, and political party legislation was signed into law by Nazarbayev just days before the Constitutional Council ruled against the religion law lends credence to Zhovtis's line of reasoning. On the other hand, the government -- or at least some elements within it -- appeared to have spent months laying the groundwork for the religion law, including through a media campaign to heighten the public's concerns about "non-traditional" religious groups and "sects." It seems more plausible to us that the religion law was derailed because the government's "liberal faction," especially the MFA, ultimately succeeded in making the case to Nazarbayev that the law would undermine Kazakhstan's international image and damage its OSCE

chairmanship.

18. (SBU) COMMENT CONTINUED: We have little doubt that this decision was manipulated from within the government by the "liberal faction" in consideration of Kazakhstan's 2010 OSCE Chairmanship. At the same time, it is worth noting that Kazakhstan's civil society engaged in vigorous and open debate with the government about this flawed bill. We also note that the government did indeed take note of the chorus of negative international comment. We suggest that the international community remain vigilant and outspoken on other retrograde legislation, like the so-called Internet Bill, because for the next several years with the OSCE spotlight on Kazakhstan, real progress will be possible, both to promote democratic issues and to strengthen civil society. END COMMENT.

HOAGLAND